

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

KATHRYN MARIE DIXON,
FKA KATHRYN MARIE STOKES,
Petitioner/Appellant,

and

SAMUEL L. STOKES,
Respondent/Appellee.

No. 2 CA-CV 2019-0044-FC
Filed November 19, 2019

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pinal County
No. DO201701007
The Honorable Karen F. Palmer, Judge Pro Tempore

AFFIRMED

COUNSEL

Law Office of Thomas M. Larson, Casa Grande
By Thomas M. Larson
Counsel for Petitioner/Appellant

Bishop Law Office P.C., Phoenix
By Daniel P. Beeks
Counsel for Respondent/Appellee

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MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Staring and Chief Judge Vásquez concurred.

B R E A R C L I F F E, Judge:

¶1 Kathryn Dixon appeals from the trial court’s ruling awarding her spousal maintenance in the amount of \$100 per month for twenty-six months. We affirm.

Factual and Procedural Background

¶2 In reviewing an award of spousal maintenance, we “consider the evidence in the light most favorable to the non-appealing party.” *In re Marriage of Pownall*, 197 Ariz. 577, ¶ 31 (App. 2000). Dixon and Samuel Stokes were married in 1975. Dixon filed a petition for dissolution in 2017 in which she requested lifetime spousal maintenance in light of her age (sixty-three), disability, and inability “to provide for herself without assistance from [Stokes].” Subsequently, in a joint pretrial statement, she requested lifetime spousal maintenance in the amount of \$500 per month.

¶3 Following a bench trial, the court issued a decree of dissolution in which it awarded Dixon \$100 per month in spousal maintenance for a period of twenty-six months. This appeal followed. We have jurisdiction under A.R.S. § 12-2101(A)(1).

Analysis

¶4 “An award of spousal maintenance is within the sound discretion of the trial court’ and we will reverse only upon a finding of an abuse of that discretion.” *Marriage of Pownall*, 197 Ariz. 577, ¶ 31 (quoting *Hardin v. Hardin*, 163 Ariz. 501, 502 (1990)). An abuse of discretion may be found “when the trial court commits an error of law in the process of exercising its discretion,” *Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 23 (App. 2004), or when the record does not support a discretionary ruling, *Boyle v. Boyle*, 231 Ariz. 63, ¶ 8 (App. 2012).

¶5 In determining, as a threshold matter, whether the requesting spouse is eligible for spousal maintenance, the trial court evaluates five

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enumerated statutory grounds, which generally concern the degree of the requesting spouse's financial independence. A.R.S. § 25-319(A)(1)-(5). In this evaluation, the court considers "only the circumstances of the requesting spouse." *In re Marriage of Cotter & Podhorez*, 245 Ariz. 82, ¶ 7 (App. 2018); *see also* § 25-319(A). Once the court finds the requesting spouse eligible for maintenance, the court "then considers the relevant circumstances of both parties to determine whether to actually grant an award and, if so, the amount and duration." *Marriage of Cotter*, 245 Ariz. 82, ¶ 7; *see also* A.R.S. § 25-319(A), (B). In determining a just amount and duration of spousal maintenance, the court evaluates "all relevant factors," including thirteen enumerated statutory factors. § 25-319(B)(1)-(13); *Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 15 (App. 1998). On appeal, Dixon challenges both the spousal maintenance amount ordered and its duration.

¶6 The decree reflects that, although insufficient evidence was presented as to many of the statutory factors in A.R.S. § 25-319(B) bearing on the amount and duration of maintenance, the trial court considered the evidence presented and made relevant findings of fact.¹ The evidence established that the parties had been married for forty-two years, and during their marriage, they owned two homes, one in Arizona and one in Idaho. Dixon became physically disabled in 1996 due to a neck and shoulder injury and began receiving disability insurance benefits. Notwithstanding her disability, she continued to care for her family, and was paid to help care for her aunt for two months before her aunt's death. Dixon's monthly disability benefits are just under \$750. Stokes had to stop working in 2017 due to a stroke and his sole source of income is \$1,645 in Social Security benefits. Neither Stokes nor Dixon has a retirement savings account or pension.

¶7 The trial court expressly found that Dixon and Stokes each received more than \$140,000 from the sale of the two homes and that Dixon could purchase a new residence for between \$90,000 and \$106,000. Neither party, the court found, had any other financial resources beyond his or her monthly benefits payment. The court found that, although Dixon does not have "zero ability to earn an income," her age and time out of the job market "could impact her ability to find stable employment." But, it determined that there was "insufficient evidence" as to how much Dixon was capable of earning on a regular basis. It also found that, although Stokes had worked as recently as a few years ago, he "suffers from a variety of medical

¹In its ruling, the trial court, largely, merely recounts the evidence presented to it, making only a few express findings of fact. Nonetheless, it appears that the court's ruling was overall based on the evidence presented.

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conditions that prevent him from earning additional income presently.” And, nonetheless, although “minimal,” Stokes has “at least some ability” to meet Dixon’s reasonable needs. It also determined that Dixon’s monthly expenses would be “significantly” reduced once she bought a new residence.

¶8 Given the trial court’s findings and the evidence before it as to Dixon’s ability to earn some income going forward, the relative equality in the parties’ financial circumstances, and the minimal ability of Stokes to provide support, we cannot conclude that the court abused its discretion or that insufficient evidence supported the court’s award of maintenance. *See Burkhardt v. Burkhardt*, 109 Ariz. 419, 420 (1973) (trial court has “broad discretion” in determining reasonable award of spousal maintenance). To the extent that Dixon asks us to reweigh the evidence, we will not. *Hurd v. Hurd*, 223 Ariz. 48, ¶ 16 (App. 2009) (we will not reweigh conflicting evidence or re-determine preponderances of evidence).

Disposition

¶9 For the foregoing reasons, we affirm.